

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 930 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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KALUBHAI HIRABHAI CHUNARA - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :**MR.D.P.KINARIWALA for Appellant,****MR.A.J.DESAI, ADDL.PUBLIC PROSECUTOR for Opponent,**

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**Date : 19/12/2006****ORAL JUDGMENT**

The present appeal arises out of the judgment
and order passed by the learned Special Judge, Court
No.6, Ahmedabad City in Special Criminal Case No.4 of

1995 on 12th September, 1995 whereby the appellant-accused was found guilty of the offence punishable under Sections 3 read with Section 7 of the Essential Commodities Act, 1955. He was also found guilty for violation of Clause-3 of the Provision of Kerosene (Restriction on Use) Order, 1966. The appellant-accused was sentenced to undergo three months rigorous imprisonment and to pay a fine of Rs.500/-, in default thereof, to undergo further 15 days rigorous imprisonment.

2. Mr.Kinariwala, learned Counsel appearing for the appellant-accused is not present today. However, as per the settled legal position the Court is supposed to decide the appeal on merits after admission of appeal and the same cannot be dismissed for want of prosecution.

3. Learned A.P.P., Mr.Desai, has taken me through the oral as well as documentary evidence led during the course of trial and finding of the learned trial Judge arrived at the conclusion of the trial.

4. The prosecution case in brief is stated thus:

4.1 That on 27/10/1994, P.S.I., Shri Ayodhya Prasad Jagannath Mishra of Traffic Branch, Ahmedabad City on the instructions of P.I., Shri Vaghela and Shri Dave, Policeman alongwith the expert person of Forensic Science Laboratory, so also, Panchas were standing near the Soni-ni-Chawl, Four Cross Road, Odhav, Ahmedabad. At that time, one rickshaw bearing Registration No.GJ-7T-2020 was emitting excessive smoke and therefore it was intercepted by the complainant and rickshaw was stopped. Thereafter, the sample of fuel was taken from the fuel tank of the rickshaw by the Police in the presence of Panch. On preliminary analysis done by the F.S.L. persons, it was found that the kerosene was mixed with the fuel recovered from the tank of the rickshaw. Thereafter, 400 ml. sample of fuel was taken in a bottle from the tank of the rickshaw in a sealed bottle and signature of the Panchas were obtained. In the meantime, the offence was registered and investigation was carried out. On detailed analysis,

the expert of the F.S.L. found that the sample which was taken from the tank of rickshaw was mixed with kerosene-hydrocarbons. Ultimately, the Investigating Agency having found sufficient material to connect the accused-appellant with the crime, filed charge-sheet.

5. After considering the evidence led by the prosecution, the Special Court came to a conclusion that the prosecution has remained successful in establishing the charge levelled against the appellant and therefore convicted the accused-appellant for the said offence by the impugned judgment dated 12th September, 1995. The very judgment and order has invited the present challenge.

6. Having considered the oral as well as documentary evidence and the written submissions which were made before the trial Court which is on record at Exh.20 it is clear that;

1. The Panchas have not supported the case of the prosecution.

2. The Officer who had sealed the sample has not

satisfactorily proved the sealing procedure of the sample drawn.

3. It also emerges that total three rickshaws were stopped and the samples were drawn from all the auto-rickshaw on the suspicion. The Panch Witness examined in the present case who ultimately turned hostile was taken as Panch in all the three cases. So the selection of Panchas by the Investigating Officer cannot be said to be objective or transparent.
4. In the report of the F.S.L., there is no reference as the percentage of the kerosene found in the sample. Even a single drop of kerosene if is added in the petrol then the same finding is also possible.
5. There is no evidence as to who was the owner of the rickshaw at relevant point of time. So, there was no reason for the trial Court to rule out the possibility that the accused was driving the rickshaw of the owner. At one place in the written argument it is referred that the accused was driving the hired rickshaw.

7. The Court has not considered the scope of adulteration in the petrol adulterated by the petrol pump owner, nor there is any clinching evidence whereby it is possible to infer that accused is the person responsible for using kerosene as fuel by adding the same in the petrol fueled by him.

8. The Court is of the view that the accused is entitled to get the benefit of doubt. This Court has decided one Criminal Appeal No.725 of 1989 on 17th November, 2006 of Rajusinh Udesinh Vs. State of Gujarat, wherein the reliance was placed on ratio laid down in case of Abdul Jabbar s/o. Abdul Sattar Vs. State of Maharashtra, reported in 1995 CRI.L.J. 3446. In the cited case, a truck driver was stopped under suspicion that he was found using kerosene with diesel as fuel for driving the truck. On appreciation of evidence the Bombay High Court has given the benefit to the driver. Various aspects were considered and one of the aspect was that there was no evidence to show that he was the owner of the truck. On the contrary, it was in evidence that he was a driver. In the present case, investigating

agency could have collected the cogent evidence as to the ownership of the rickshaw but it was not done and therefore the accused should be given benefit of doubt.

9. In the result, present appeal is allowed. The judgment and order dated 12th September, 1995 rendered by the learned Special Judge, Court No.6, Ahmedabad City in Special Criminal Case No.4 of 1995 is hereby quashed and set aside. The appellant is acquitted of all the charges levelled against him. Bail bond of the accused-appellant shall stand cancelled.

(C.K.BUCH, J.)

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